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Attorneys for Defendant Robert Ladd

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	Case No. 1:18-cv-08175-ER
)	
vs.)	
)	
BARRY C. HONIG,)	
<i>et al.</i> ,)	
)	
Defendants.)	
)	

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT ROBERT
LADD'S MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 12(b)(6) AND MOTION TO STRIKE PURSUANT
TO FEDERAL RULE OF CIVIL PROCEDURE 12(f)**

Pursuant to Rule 201 of the Federal Rules of Evidence, Defendant Robert Ladd respectfully submits this Request for Judicial Notice in support of his Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Motion to Strike Pursuant to Federal

Rule of Civil Procedure 12(f) and the Memorandum of Law in support thereof (collectively, the “Motion to Dismiss”).

Federal Rule of Evidence 201 provides that the Court “must take judicial notice” of information that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned” if “a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(b) and (d). “Although the general rule is that a district court may not look outside the complaint and the documents attached thereto in a ruling on a Rule 12(b) motion to dismiss, [the Second Circuit has] acknowledged that the court may also consider matters of which judicial notice may be taken.” *Apotex Inc. v. Acorda Therapeutics, Inc.*, 823 F.3d 51, 60 (2d Cir. 2016) (internal quotation marks omitted).

In the present case, Mr. Ladd requests that the Court take judicial notice of and consider the full text of the following categories of documents submitted in support of his Motion to Dismiss:

1. Correspondence and articles cited by the Securities and Exchange Commission (“SEC”) in the Amended Complaint (“AC” or “Complaint”);
2. Reports required to have been filed with the SEC by Intel Corporation, McAfee Associates, Inc., and MGT Capital Investments, Inc.;
3. News reports and widely reported facts concerning John McAfee and McAfee Associates, Inc. prior to May 9, 2016;
4. News articles concerning John McAfee and McAfee, Inc.; and
5. Publicly available historical stock price information.

The documents subject to judicial notice are attached to the Declaration of Randall Lee in Support of Defendant Robert Ladd’s Motion to Dismiss. For ease of reference, these documents are listed in Attachment A.

First, in ruling on a motion to dismiss under Rule 12(b)(6), the court may consider documents incorporated by reference into the complaint, *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010), even if the documents are not attached to the complaint, *In re Bausch & Lomb, Inc. Sec. Litig.*, 592 F. Supp. 2d 323, 338 (W.D.N.Y. 2008) (“A court reviewing a motion to dismiss a securities fraud claim may take judicial notice of and consider the contents of ... documents integral to and explicitly relied on in the complaint, including the full text of documents that are partially quoted.” (citing *Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir. 2000))); *City of Philadelphia v. Fleming Cos., Inc.*, 264 F.3d 1245, 1251 n.4 (10th Cir. 2001) (“If a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff’s claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss.” (internal quotation marks and alterations omitted)). The Court thus should consider the full text of articles which are partially quoted in, and are integral to the theories of, the Complaint.

Second, “a district court may take judicial notice of the contents of relevant public disclosure documents required to be filed with the SEC,” such as Forms 8-K and Forms 10-K. *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991); *see also In re Bausch & Lomb, Inc. Sec. Litig.*, 592 F. Supp. 2d at 338 (a court “may take judicial notice of ... documents that are required by law to be filed with the SEC”); *In re NAHC, Inc. Sec. Litig.*, 306 F.3d 1314, 1331 (3d Cir. 2002) (judicial notice properly taken of “documents filed with the SEC”); *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999) (in considering motion to dismiss in securities fraud cases, court properly may take judicial notice of relevant public documents required to be filed with the SEC).

Third, the Court may also take judicial notice of news reports demonstrating the market's awareness of certain facts and of events widely reported. *See In re Enters. Mortg. Acceptance Co., LLC, Sec. Litig.*, 391 F.3d 401, 411 (2d Cir. 2004) (taking judicial notice of press coverage for purposes of determining whether inquiry notice had been triggered); *see also In re Am. Apparel, Inc. Shareholder Litig.*, 2012 WL 1131684, at *14 (C.D. Cal. Jan. 13, 2012) ("Taking judicial notice of news reports and press releases is appropriate for show[ing] that the market was aware of the information contained in the news articles." (internal quotation marks omitted)); *In re Zyprexa Prods. Liab. Litig.*, 549 F. Supp. 2d 496, 501 (E.D.N.Y. 2008) ("Judicial notice can be taken of ... press releases and news articles ... in determining what the market knew.").

Fourth, a court may take judicial notice of news articles for the fact of their publication. *See In re Merrill Lynch Tyco Research Sec. Litig.*, 2004 WL 305809, at *4 n.3 (S.D.N.Y. Feb. 18, 2004); *see also Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 424-25 (2d Cir. 2008) (upholding the taking of judicial notice, for the fact of their publication, of media reports); *Garber v. Legg Mason, Inc.*, 537 F. Supp. 2d 597, 612 n.4 (S.D.N.Y. 2008) (taking judicial notice of newspaper articles for the fact of their publication)

Fifth, a court may take judicial notice of historical stock price information. *See, e.g., Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 166 n.8 (2d Cir. 2000) ("[T]he district court may take judicial notice of well-publicized stock prices without converting the motion to dismiss into a motion for summary judgment."); *Katyle v. Penn Nat'l Gaming, Inc.*, 637 F.3d 462, 466 (4th Cir. 2011) (judicial notice of stock prices proper under Rule 201); *LaGrasta v. First Union Sec., Inc.*, 358 F.3d 840, 842 (11th Cir. 2004) (proper to take judicial notice of stock prices in securities fraud action).

Dated: June 19, 2019

Respectfully submitted,

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ATTACHMENT A

**Documents Cited in the Memorandum of Law in Support of Defendant Robert Ladd's
Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) and
Motion to Strike Pursuant to Federal Rule of Civil Procedure 12(f)**

DOCUMENT DESCRIPTION	EXHIBIT
<i>Documents Incorporated by Reference into the SEC's Complaint</i>	
<i>New Alert: MGT Capital Investments, Inc.</i> , Small Cap Leader (Feb. 3, 2016), http://smallcapleader.com/new-alert-2-3-2016/ (believed to be cited at AC ¶ 139)	I
<i>Stock BEAST Report – MGT Capital Investments, Inc.</i> , Stock Beast (May 9, 2016), http://newsletter.hotstocked.com/newsletters/view/NYSE:_MGT__Beastmode_engaged_-_John_McAfee_driving_the_Bus-2475422 (cited at AC ¶ 146)	K
<i>Reports Filed with the SEC</i>	
MGT Capital Investments, Inc. Form 10-K Annual Report for the fiscal year ended December 31, 2015, dated April 14, 2016	A
Schedule 14A filed with the SEC by MGT Capital Investments, Inc. on October 13, 2017	B
Excerpts from Form 8-K filed with the SEC by MGT Capital Investments, Inc. on April 5, 2011	C
Form 8-K filed with the SEC by MGT Capital Investments, Inc. on November 9, 2012	D
Form 8-K filed with the SEC by MGT Capital Investments, Inc. on May 18, 2015	E
Excerpts from MGT Capital Investments, Inc. Form 10-K Annual Report for the fiscal year ended December 31, 2018, dated April 16, 2019	F
Form 8-K filed with the SEC by MGT Capital Investments, Inc. on October 9, 2015	G
Excerpts from Form S-1 filed with the SEC by MGT Capital Investments, Inc. on November 6, 2015	H
Form 8-K filed with the SEC by MGT Capital Investments, Inc. on May 9, 2016	J
Excerpts from Form 8-K filed with the SEC by Intel Corporation on August 19, 2010	L
Form 8-K filed with the SEC by Intel Corporation on April 4, 2017	M

Form 8-K filed with the SEC by McAfee Associates, Inc. on January 11, 1994	N
Excerpts from Amendment No. 1 to Form S-4 filed with the SEC by McAfee Associates, Inc. on July 18, 1995	O
Excerpts from Form 8-K filed with the SEC by MGT Capital Investments, Inc. on December 14, 2010	Q
Form 4 filed with the SEC by Robert Ladd on January 5, 2012	R
Form 4 filed with the SEC by Robert Ladd on December 1, 2015	S
Form 4 filed with the SEC by Robert Ladd on May 31, 2016	T
Form 10-K/A Annual Report for the fiscal year ended December 31, 2018 filed with the SEC by MGT Capital Investments, Inc. on April 22, 2019	U
<i>News Reports Demonstrating Market's Awareness of Certain Facts</i>	
Factiva printout of a Wall Street Journal article dated June 16, 1995 with the headline "McAfee Associates"	V
Adam Thomson, <i>Four hours with John McAfee</i> , Financial Times (Dec. 7, 2012), https://www.ft.com/content/fcc5bdda-3f36-11e2-a095-00144feabdc0	W
Wikipedia, John McAfee (Apr. 13, 2016), https://web.archive.org/web/20160413013742/https://en.wikipedia.org/wiki/John_McAfee	X
<i>News Articles for the Fact of their Publication</i>	
Jonathan Stempel, <i>John McAfee and Intel settle their lawsuits</i> , Reuters (Jul. 6, 2017), https://www.businessinsider.com/john-mcafee-and-intel-settle-their-lawsuits-2017-7	Y
Teresa Lo, <i>John McAfee and Intel Settle Trademark Dispute</i> (Jul. 6, 2017), https://www.jdjournal.com/2017/07/06/john-mcafee-and-intel-settle-trademark-dispute/	Z
<i>Historical Stock Price Information</i>	
Table prepared by Yahoo! Finance showing daily opening, closing, high, and low prices and daily volume for the stock of MGT Capital Investments, Inc. from May 2, 2016 to September 7, 2018, <i>available at</i> https://finance.yahoo.com/quote/MGTI/history?p=MGTI	P